



Gas Directive amendment and relations with third countries

What would the need for new or renegotiated agreements mean in practice?

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Introduction

The proposed amendment to the EU Gas Directive aims to extend EU Internal Gas Market legislation to import pipelines from third countries. This would mean imposing third-party access, ownership unbundling, transparency and EU-regulated tariffs on infrastructure outside the boundaries of the internal market, for example, due to entering the EU from international waters. As a consequence, a number of intergovernmental agreements (IGAs) will have to be negotiated, or renegotiated with third-country governments. There is some concern among affected Member States that the need for new or renegotiated IGAs, because of the amendment, could shift powers of negotiation from them to the European Commission. It is not clear which conditions will apply to existing or new pipelines. Many factors indicate that the aim of this proposed regulatory change has the Nord Stream 2 project¹ as its main target, rather than other existing or new import pipelines. However, this does not rule out that there may be consequences for other infrastructure too.

There are currently five international export pipelines entering the EU gas market by sea (Transmed, MEG, Medgaz, Greenstream and Nord Stream) that will be affected by the proposed amendment, with two more (TAP/TANAP) and (Nord Stream 2) being under construction, to be taken into operation soon². The five in place will be handled as existing pieces of infrastructure, potentially to receive a derogation from the amendment. An additional, important future pipeline project that could also be affected is the planned pipeline from Israel via Cyprus to Greece (East Med)³. The third-country suppliers or transit nations involved vary greatly in their upstream regulation, political stability, interests, attitudes towards each other, and in their general inclinations towards the liberalized EU gas market and the conditions it wishes to impose. There is also great variation as to when these pipelines were constructed and taken into operation – some pre-date even the first Gas Directive.

The requirement for new or renegotiated IGAs is not without risk. Third-country governments may not be comfortable about having EU regulation extended to their doorsteps, and may make counter demands. Various geopolitical factors may have changed since the pipelines began operations, and this may influence negotiations. Many of the affected pipeline projects were planned, negotiated and constructed under very different political circumstances. Opening up for new negotiations in today's environment risks creating new uncertainties which may carry unforeseen, possibly negative consequences.

In this paper, we will review each of the affected pipelines, and discuss to what extent such risks or other complications exist.

This report is a supplement to a previous report, "Analysis of the proposed gas directive amendment," that was published in March 2018. The work has been commissioned by Nord Stream 2.

¹ Talus and Mortensen: Gas pipeline proposals take power from EU states, FT JUNE 11, 2018

² Pipelines from Norway are not affected by the amendment for two reasons: 1) Norway is a member of the EEA and as such subject to EU legislation (not considered a "third country exporter") 2) The pipelines from Norway are defined as upstream pipelines (from production well to transmission system) and thus explicitly excluded from the Gas Directive (DIR 2009/73/EC concerning common rules for the internal market in natural gas, Article 2, No (2) and (3))

³ An additional pipeline project, GALSI, from Algeria via Sardinia to the Italian mainland, has been considered, but at the moment does not look likely to go ahead.

1. Existing marine import pipelines to the EU

The countries of the European Union have imported gas from third countries for a long time. The first imports of gas came to the UK from Algeria in the 1960s in the form of LNG. During the 1970s, large-scale imports from Russia to Western Europe began, delivering gas from Siberian fields via onshore pipelines. Norway began deliveries in 1977 from the Ekofisk field to Germany, Belgium and France. The first major subsea export pipeline constructed across the Mediterranean was Transmed, bringing Algerian gas to Italy via Tunisia from 1983. Prior to that, Algerian gas had been exported only as LNG.

Transmed was followed in 1996 by MEG – the Maghreb-Europe gas pipeline - from Algeria via Morocco to Spain. In 2004, Greenstream, from Libya to Italy, was commissioned. Medgaz from Algeria to Spain and Nord Stream from Russia to Germany followed in 2011 and 2011/12 respectively.

In all cases of international pipeline projects, especially the ones involving third-country exporters, there was substantial initial time involved in planning and negotiations before construction could start. In most cases, supplier, transit and buyer governments were all heavily involved. In some cases, construction could not begin for years, or was interrupted midway, due to a variety of political tensions.

Table 1: Affected existing pipelines

Pipeline	Route	Commissioned	Capacity, bcma
Transmed	Algeria - Tunisia - Italy	1983	30
MEG	Algeria - Morocco - Spain - Portugal	1996	12
Greenstream	Libya - Italy	2004	11
Medgaz	Algeria - Spain	2011	8
Nord Stream	Russia - Germany	2011/12	55

Source: Arthur D. Little

Table 2: Affected planned pipelines

Pipeline	Route	Commissioned	Capacity, bcma
TAP/TANAP	Turkey - Greece - Albania - Italy	2020	10/15
Nord Stream 2	Russia - Germany	2019	55
East Med	Israel - Cyprus - Greece - Italy	2030	20

Source: Arthur D. Little

2. Inter-governmental agreements related to pipeline projects

Figure 1: Typical agreements required in relation to international pipeline projects

	Inter-Governmental Agreement (IGA: state-state)	Host Government Agreement (HGA: state-investor)	Joint Venture Shareholders Agreement (stateowned/private)
Inter-state level	<ul style="list-style-type: none"> Legal & fiscal jurisdiction, regulatory environment, mutual assurances of co-operation Defines governing law, fiscal regime and arrangements for transit fees 	<ul style="list-style-type: none"> Grants access rights to land use, facilities, regulation, participation of state-owned enterprise, etc. General IGA principles implemented (tax, H&S, etc.) 	<ul style="list-style-type: none"> Sets out rights and obligations of each project participant, including obligation to provide financing, or external financing
Inter-company level	<p>Gas Sale and Purchase Agreement (GSPA: buyer-seller)</p> <ul style="list-style-type: none"> GSPA between buyer and seller contains clauses for volume, price, delivery point, term, etc. 	<p>Gas Transportation Agreement (GTA: buyer/seller – pipeline operator)</p> <ul style="list-style-type: none"> For transport of gas under the GSPA. A GTA may not be necessary if seller owns the pipe to the border and buyer owns the pipe to market area. 	<p>Pipeline Operating Agreement (POA: pipeline owner- operator)</p> <ul style="list-style-type: none"> Governs day-to-day operation of facilities and appoints one company to conduct operations on behalf of the joint venture

Source: Arthur D. Little

An international pipeline project typically requires a set of agreements to be in place, before financing can be arranged. These must be concluded between the participating nation states and/or the commercial entities concerned. They tend to be tailor-made depending on circumstances and requirements, in terms of both structure (interlinkage and dependency) and content (terms and conditions applied).⁴ Nonetheless they address similar sets of issues that must be dealt with one way or the other. Model agreements (PMAs) for international cross-border pipelines (IGAs and HGAs) have been developed in recent years. The International Energy Charter has for example developed non-prescriptive and objective model agreements, building on international best practice. These however have to be adapted to suit individual needs.⁵

Inter-governmental agreements (IGAs)

An IGA regulates the relationship between the two (or multiple) states involved (supplier, buyer and, potentially, one or more transit countries): which jurisdiction applies where, who taxes whom and on what basis, which commercial entities are appointed to carry out the related activities, how operations are regulated, how potential transit and related fees will be dealt with, and how cooperation is ensured.

Host government agreements (HGAs)

An HGA is made by the project investor with the government of the country through which the pipeline needs to pass, which is also called the transit country. It grants access to land and facilities, and clarifies how the pipeline will be regulated (if at all),

4 Intergovernmental Agreements and Host Government Agreements on Oil and Gas Pipelines – A comparison – Energy Charter Secretariat 2015, p 30: “The project-specific approach [of cross-border pipeline agreements] aims at creating an exhaustive regime for the identified project. Therefore, it is not enough for the involved states to merely agree on cooperation regarding the project. Instead, the actual construction and regulation of the project should be regulated. This task is, however, mostly assigned to a private company or a whole consortium consisting of private and sometimes also state-owned companies that are registered and established in different states (the foreign investors). In order to incorporate the investors into the legal regime of the project, additional agreements are signed between the involved states and the foreign investors (the so-called HGAs) and are often incorporated into or referred to in the respective IGAs.”

5 Secretariat of International Energy Charter: Model Agreements for Cross-border pipelines, first edition 2004, second edition 2008

the level of transit fees agreed, and whether compensation is to be taken in cash or in kind.

Joint venture shareholders agreements (JVSA's)

A JVSA specifies the rights and obligations of the shareholders of the project company. Typically, with international pipeline projects, a project company will be formed to construct, own and/or operate the pipeline, with the seller and buyer side as shareholders. It may also involve transit partners. In many cases, supplier- and transit country shareholders are states or state-owned entities. In this way, it is possible to create some assurance that any of the two or multiple governments involved will not without risk compromise the economic foundations of the project, for example, by altering legislation or regulation detrimentally during the economic life of the assets concerned.

Gas sales and purchase agreements (GSPA's)

This is the agreement between the seller and buyer entities for the transfer of ownership over time of a specified volume of gas. It may or may not be linked to the infrastructure in question. In the liberalised market environment of the EU, the GSPA is separate to any transport agreement from seller to buyer of the volume in question.

Gas transportation agreements (GTAs)

A GTA specifies the terms and conditions for the transport of gas through the pipeline, and the compensation payable in the form of transit tariffs or fees. In many international pipeline cases, where the exporter of gas and the owner of the infrastructure are one and the same, transport costs are part and parcel of the gas sales price. In others, the two agreements

are separate. In some cases, where a third country has to be crossed along the way, a transit fee may be payable to that country, or its appointed commercial entity, in cash or in kind.

Pipeline operating agreements (POA's)

The POA regulates the day-to-day operation of the pipeline on behalf of the partners which own the pipeline: which entity carries responsibility for carrying it out, who is liable for any damage and under what circumstances, etc.

As can be seen from the above, given the number of stakeholders involved, many different types of agreements are necessary for the safe and successful completion and operation of an international pipeline project. Not included in the list above are of course the commercial contracts between the project company and the contractors tasked with building the pipeline. Such contracts form an additional layer of arrangements which are commercially dependent on the international agreements in place. In some cases, the stakeholders outlined here take on more than one role, which is why it is not always possible to discern all agreements described above individually – they may be combined. But the principles, issues dealt with, and required terms and conditions apply universally, just the same. Since these agreements are interlinked and build upon each other, it is difficult to change one of them without affecting the entire structure. Thus, the proposed amendment of the Gas Directive could have consequences not only for IGAs between buyer and supplier countries, but also for other stakeholders and related agreements.

3. Case studies of affected pipelines

Transmed⁶

Transmed was the first subsea pipeline to be built across the Mediterranean. It had been in discussion since the 1960s, but the technology to build it could not be developed until the late 1970's/early 1980's. State-owned Italian gas buyer ENI was responsible for pushing the project to fruition, assuming responsibility for both technology development and financing. The project was not made easier by the strained relationship between transit country Tunisia and supplier Algeria. It is notable that because of this, there is no tripartite agreement between the three parties involved – ENI negotiated separate HGA agreements with Tunisia and Algeria.

Figure 2: Transmed, MEG, Medgaz and Greenstream pipelines



Source: Arthur D. Little

Early on, Tunisia tried to use its strategic geographic position to obtain a much higher transit fee (12%) than was offered. Eventually, after Algerian Sonatrach and ENI started planning for an LNG contract instead, Tunisia accepted 5.625 percent of transited volumes, payable in cash or in kind. The gas passes ownership to an ENI subsidiary at the Algerian/Tunisian border, to minimize direct interrelations between Algeria and Tunisia. Later, the project suffered delays from changes in regime and

export policy in Algeria. The new regime wanted to shift the pricing basis from the agreed underlying alternative fuel prices in the consumer market to crude oil parity⁷ – to benefit from the soaring oil prices at the time. It held ENI and its idle pipeline to ransom. A deal was eventually made by ministers from both countries (at a much higher price than agreed initially), allowing the pipeline to be completed and deliveries to begin.

The currently proposed Gas Directive amendment would necessitate new agreements to be reached with both Tunisia (over transit fees) and Algeria, unless derogations were granted upfront. Questions must be addressed however about the duration of such derogations and the impact of changing legislation, and if such exemptions are to be granted to some or all such assets.

Presumably, if derogation was not granted unconditionally upfront, EU internal gas market regulation would end at the Tunisian landfall. But since the gas enters into ENI ownership at the Algerian/Tunisian border, this is far from certain. It could be argued that the Third Gas Directive should apply at the Algerian border, with Tunisia having to accept a transparent transit tariff set according to EU rules. Tunisia is not a third-country exporter, only a transit country. How transit countries are to be treated in this context has not been made clear by the proposed amendment. Neither is the significance made clear about the ownership of the gas in transit, or of the pipeline in question – this could for example be an entity that is entirely domiciled (or owned by a majority parent domiciled) within the EU. These issues raise complications, the effect of which needs to be better understood.

Either way, given the changes in government in all three countries since the 1980s, negotiations should not be expected to be easy. The outcome is far from predictable. Most likely, derogation is the preferable way forward, but that too may not be easily achievable unless the derogation is granted unconditionally upfront. However, if the objective is to limit derogation in time, or to only grant derogation part of the distance, or according to some other condition deviating from the current situation, it may be more difficult.

6 Hayes, James A. Baker III Institute for Public Policy – Energy Forum: Algerian Gas to Europe – the Transmed Pipeline and Early Spanish Gas Import Projects, May 2004

7 Pricing in long-term international gas contracts at this time typically included base prices reflecting current competitive levels in the market concerned, and an indexation formula to keep the base price competitive over time. These could be linked either to the price of alternative fuels in the market or to crude oil prices.

MEG (Maghreb-Europe Gazoduc)⁸

Pipelines from Algeria to Spain and on to France had been in discussion since the early 1960s, with one option to go through Morocco, crossing the Straits of Gibraltar (now MEG), and the other to go from the port of Beni Saf to Almeria on the Spanish coast (now Medgaz). In both cases, but especially for Medgaz, which crosses deep water, technology was a major obstacle for a long time. In the case of MEG, however, there were further complications in the form of political tension between Algeria and Morocco. This is partly due to border conflicts between the two countries, but most of all due to the unstable situation in the former Spanish colony of Western Sahara, where Morocco made claim to two-thirds of the territory, while Algeria backed the Polisario (SADR) guerrilla's fight for independence. A ceasefire between the warring factions was negotiated in 1991, but to this day, the conflict remains unresolved. It was not until the mid-1990s, on the back of a rapidly growing Spanish gas market, that Spain, with the help of the European Union was able to push through an agreement between Algerian gas supplier Sonatrach and Morocco for a pipeline across the Gibraltar Straits to Spain, and onwards to Portugal. The Maghreb Europe pipeline was put into operation in 1996.

The relationship between Algeria and Morocco remains an uneasy one. Algeria continues to back the Polisario separatists in the Western Sahara. Morocco, so far dependent on hydrocarbon imports for its energy supplies, is seeking to diversify away from Algerian gas. Recent reports suggest that Algeria is worried that Morocco might not renew the Maghreb-Europe pipeline agreement that covers the stretch of the pipeline which crosses Moroccan territory (this agreement expires in 2021)⁹. Morocco is pursuing several projects to replace Algerian gas:

- Building an LNG terminal at Jorf Lasfar/El Jadida to import gas from Qatar and/or Russia.
- Developing indigenous gas sources found in eastern Morocco.
- Participating in building an offshore pipeline from Nigeria, to bring gas to markets in West Africa.
- Developing renewable energies, especially solar power.

The proposed amendment of the Gas Directive would further complicate this already delicate situation. Renegotiation of the inter-governmental agreements involved would necessarily involve three states, two of which are in conflict with each other. It would also give Morocco an additional reason for

declining to renegotiate the existing transit agreement with Algeria after 2021. Morocco, like Tunisia, as discussed above, is a third country transiter, not an exporter of gas. How should a third transit country be involved, if the amendment seeks to extend the provisions of the Third Energy Package to a third country exporter crossing international waters to reach the EU? Where would EU regulations end? At the Moroccan coast? Or the Algerian/Moroccan border? To safeguard Algerian supplies to Europe as far as possible, it may be wise to leave things as they are until the situation becomes less complicated. It could potentially be avoided by granting unlimited and unconditional derogations upfront for all existing pipelines, but again, that would beg the question of why the amendment is necessary in the first place. If it is for the sole purpose of preventing or influencing one particular new pipeline, why not make that explicit? And how could this not be discriminatory market intervention?

Without derogation, it is conceivable that in the MEG case, agreements would have to be made or renegotiated between:

- Spain and Algeria (IGA from 1992).
- Enagas and Sonatrach (GSPA, potentially, depending on current terms and conditions).
- Spain, Morocco and Portugal (JVSA for operator Metragaz, owned by Spanish Gas Natural/Sagane, Moroccan SNPP and Portuguese Transgas).
- Algeria and Morocco (extension of IGA/GTA on transit post 2021).
- The European Union and Morocco (to implement EU regulations on pipeline assets in Morocco, although this is unclear since Morocco is a transit country and not a third-country supplier).
- The European Union and Algeria (potentially, as Algeria is the supplier of gas, but takes no part in gas transport beyond the Algerian border).

Medgaz

Medgaz connects Algerian onshore gas fields directly with the Spanish gas grid at Almeira, and has a capacity of 8 bcma. It came onstream in 2011, and was built in response to European security of supply concerns. There have been no reports of difficulties prior to or at construction, only two countries were involved. Algeria's views as to having European regulation extended to its shores are unknown.

⁸ Ibid

⁹ North Africa Post June 28, 2017: Fears in Algeria over Non-Renewal of Maghreb-Europe Pipeline by Morocco

Greenstream

Greenstream connects Libyan gas fields with Gela, Sicily. It was inaugurated in 2004 and has a capacity of 11 bcma. Greenstream has suffered from occasional shutdowns due to the political and social turmoil in Libya. Whether negotiations for a new IGA following the potential passing of the amendment of the Gas Directive will be straightforward or not is difficult to foresee, though this seems highly unlikely, with Libya politically unstable, and Italy’s government too fresh to be entirely predictable:

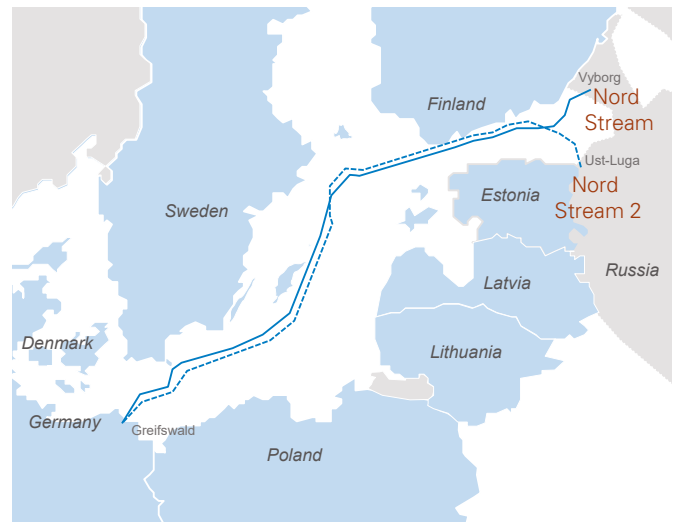
- Libya is still seeing the effects of political unrest, currently with two de facto capitals with differing parties claiming to govern the country.
- Italy’s new government appears willing to break with the previous government’s energy policy, potentially affecting agreements made in the case of the TAP pipeline (see separate paragraph)¹⁰.

The difficulty of any negotiations and the final outcome will depend on what regime is present in the two countries involved and their respective relations at the time.

Nord Stream

The Nord Stream pipeline began operations in 2011/12 and has a capacity of 55 bcma. Its construction was favored by the EU and given PCI status at the time in light of growing European gas demand.¹¹ It was preceded by contacts with all nations around the Baltic Sea and beyond, whose permissions for construction in international waters was required. No Inter-governmental agreement was signed for Nord Stream, with contractual relations limited to the commercial entities involved. Prior to construction, considerable debate and protests concerning both environment and security issues occurred, for example in Sweden. But after operations started, this debate has subsided. It is conceivable that, following potential adoption of the amendment, IGA negotiations for derogation will be required, though this will depend on the exact formulation of the new directive and how far it extends along the pipeline, and of course whether derogation is granted upfront for existing assets.

Figure 3: Nord Stream pipelines



Source: Arthur D. Little

The amendment as such will not influence in any way the number of competing suppliers at the inlet of the pipeline – Gazprom would remain the only seller of gas willing and able to use it. The amendment will also make no difference to efficiency of operations, or reduce the cost of gas exiting the pipeline – competition with other gas supplies will still be limited to when gas enters the European system at the German landfall. The same will apply to the planned Nord Stream 2 pipeline.

TAP/TANAP

The TAP (Transadriatic pipeline) connects with TANAP (Transanatolian pipeline) at the Greek-Turkish border. It is particularly complex in the context of the proposed Gas Directive amendment, since it crosses many nations, in and out of the EU (passing through Albania, a third transit country), and has a subsea section across the Adriatic Sea. Gas will be supplied from the Caspian region, and not from Turkey, which like Albania is also a transit country. The TAP/TANAP project is far advanced and will be put into operation in 2020, and have an initial capacity of 10 bcma. It has already received an exemption from EU regulations.¹² The question is whether that exemption will still apply after the amendment comes into force, or whether it will have to be reviewed.

¹⁰ Reuters June 6, 2018: Italy’s new government to review TAP gas pipeline

¹¹ PCI – Project of Common Interest

¹² COMMISSION DECISION of 17.3.2015 prolonging the exemption of the Trans Adriatic Pipeline from certain requirements on third party access, tariff regulation and ownership unbundling laid down in Articles 9, 32, 41(6), (8) and (10) of Directive 2009/73/EC

Figure 4: TAP/TANAP pipeline



Source: Arthur D. Little

The TAP project is governed by the following agreements¹³:

- Treaty between Albania, Greece, and Italy (TAP IGA), 2013.
- Agreement between Albania and the Transadriatic Pipeline AG (TAP HGA Albania).
- Agreement between Greece and the Transadriatic Pipeline AG (TAP HGA Greece).

TANAP is governed by:

- IGA between Turkey and Azerbaijan (TANAP IGA, 2012).
- HGO agreement between Turkey and the Transanatolian Natural Gas Pipeline System (TANAP HGA, 2012).

Nord Stream 2

Nord Stream 2 is a new pipeline system following a similar route to that of the first Nord Stream project, aiming to add capacity of a further 55 bcm. The project is far advanced, with offshore pipelay starting in September 2018. The pipeline is planned to commence operations in late 2019. Much debate

has surrounded the planning phase, but four of the five country approvals required (Russia, Finland, Sweden, Germany) under existing legislation are now in place. Danish permits remain to be approved. The controversy has mainly been around the question of whether the pipeline would make Europe more dependent on Russia as a gas supplier. In our view, even with the pipeline in place, it is still up to European buyers whether they buy Russian gas supplies or not. They cannot be compelled to buy gas, even if the terms are attractive.

The European Commission is seeking legal means to prevent or at least influence the construction of Nord Stream 2, the proposed Gas Directive amendment is its latest attempt. It is not yet clear whether Nord Stream 2 would be able to seek derogation (as an existing pipeline) or exemption (as a new, yet-to-be completed pipeline), since the formulation of the new directive is not finalized and it is conceivable that Nord Stream 2 will already have been largely or entirely constructed, or even taken into operation, when the amendment comes into force. The fact that the investment began before the amendment was even being discussed may also influence its status in this respect. Derogation would have to be in line with conditions applied to other existing pipelines, otherwise Nord Stream 2 could potentially claim discrimination under WTO rules, and take legal action¹⁴. Forced status as a new pipeline requiring an exemption could result in similar effects – since the pipeline project was far advanced when the amendment was proposed. This further weakens the usefulness and logic of adopting the amendment.

EastMed

The EastMed project is a proposed pipeline that would bring gas from fields offshore of Cyprus and Israel to Greece and onwards to southern Italy and Bulgaria. Cyprus discovered an offshore gas field called Aphrodite some years ago, containing between 100 and 170 bcm of gas. It is currently under development. Israel too has significant gas reserves in the area, some of which

¹³ Intergovernmental agreements and Host Government Agreements on Oil and Gas Pipelines – A comparison – Energy Charter Secretariat 2015

¹⁴ The recent WTO ruling on the complaint of Russia against the European Union (European Union and its Member States – Certain Measures relating to the Energy Sector- Report of the Panel – Conclusions and Recommendations - WT/DS476/R) could create a legal precedent in this context.

could be exported to Europe; a decision is expected in 2019.¹⁵ Israel is playing a vital role in the project, providing most of the required transport volumes for the pipeline from its Leviathan field in the Levantine basin. The plan is to build a pipeline to Italy via Crete and the Greek mainland, linking the discoveries directly to the European gas market. It would bring diversification and offer the option of developing a southern European gas.

Figure 5: EastMed project



Source: Arthur D. Little

Because it directly links an EU-internal offshore field with the downstream market, while at the same time connecting to an external (non-EU) supply source (in Israel), the Gas Directive amendment creates problems for the project. Is it to be considered as an offshore pipeline from the EU-internal Aphrodite field, like the ones linking Norwegian, Danish, and British offshore reserves to the mainland? Such pipelines enjoy special status under the Gas Directive¹⁶. Or is it an import pipeline from a third country supplier (Israel)? This uncertainty

creates problems for investors, as the economic conditions of the project become less predictable.

An alternative for Israel if the project is considered unattractive as a result of the Gas Directive amendment would be to build a pipeline to Egypt, liquefy the gas there at one of the existing LNG facilities, and ship it as LNG to any market offering the best netback price. Israel has already signed supply deals with Egypt and Jordan, and is considering links to Turkey¹⁷. Such a development would have several potential drawbacks for the EU:

- Missed opportunity to diversify and increase security of supply in the South East Europe region, especially Bulgaria.
- Missed opportunity to create a southern gas hub.
- Increased costs due to need to liquefy gas in Egypt.
- Potential redirection of gas to other markets than the EU, including Egypt, Jordan, Turkey and Israel and, via existing liquefaction plants in Egypt, to the rest of the world.
- Higher CO₂ emissions due to additional transport needs and energy to liquefy gas.
- Missed opportunity for economic development in Cyprus, Greece and Italy, three regions with considerable current economic challenges.

¹⁵ <https://www.reuters.com/article/us-ceraweeek-energy-israel/israel-expects-decision-on-east-med-gas-pipeline-to-europe-in-2019-idUSKCN1GK2OI>

¹⁶ Upstream pipelines (from production well to transmission system) are explicitly excluded from the Gas Directive (DIR 2009/73/EC concerning common rules for the internal market in natural gas, Article 2, No (2) and (3))

¹⁷ Ibid

Conclusion

As we have seen above, the adoption of the proposed amendment and its consequences for relations and negotiations with third countries is not without its complications, and the effects are difficult to foresee. It is not at all clear that the EU will be in a very strong position during negotiations with third countries for new or renewed IGAs or other related agreements, given that most pipelines have been in place and successfully operated under existing regulatory regimes for some time, with competition developing satisfactorily between suppliers at the inlets to the European transmission system.

Conditions during which existing pipelines were built were very different, and the variety of arrangements in place reflects this. It seems odd to introduce legislation that would result in having to grant derogation in almost every case because of elapsed time and the fact that circumstances are different. Also, one should not underestimate the willingness of third countries to utilize natural gas for political ends. Whatever they may be, they are likely to be different from those potentially pursued when the pipelines were constructed.

Derogations for existing pipelines do not in any case offer a complete solution. The grounds for being granted a derogation for an existing pipeline are unclear, as is the process for obtaining a derogation. Experience of the exemption regime for new pipelines under the Third Gas Directive shows that regulators can apply conditions which are problematic for projects, as was the case for OPAL. In any case it cannot be guaranteed up front that affected pipelines will receive derogations or exemptions, and for what period of time these will last.

The EU will be increasingly dependent on imported gas supplies. A halt to such supplies could have severe consequences. Unnecessarily opening up negotiations where the outcome is far from certain seems unwise. The risk to new potential infrastructure investments that could bring diversification to Southern and Eastern Europe is worrying. It would be prudent not to adopt the amendment until the potential implications are understood in more detail.

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What would the need for new or renegotiated agreements mean in practice?

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